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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,778	09/29/2000	Lars Langemyr	CMM-00101	8229

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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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Commissioner for Patents

Please replace Section (9) of the Examiner's Answer, "Grounds of Rejection", with the following text:

(9) Grounds of Rejection

35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The following rejections are based on Annex IV of the "Interim Guidelines for Examination of Patent Applications for Subject Matter Eligibility" (hereinafter "Interim Guidelines"), effective Oct. 26, 2005, and posted on the USPTO official website at the following URL: http://www.uspto.gov/web/offices/pac/dapp/ogsheet.html

Claims 1, 3-87, and 89-101 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. An invention which is eligible for patenting under 35 U.S.C. § 101 is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The fundamental test for patent eligibility is thus to determine whether the claimed invention produces a "useful, concrete and tangible result." According to p.4 of the Interim Guidelines:

The claimed invention as a whole must be useful and accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96 (1966)); In re Fisher, 421 F.3d 1365, 76 USPQ2d 1225 (Fed. Cir. 2005); In re Ziegler, 992 F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

The test for practical application as applied by the examiner involves the determination of the following factors:
a. "Useful" - The Supreme Court in Diamond v. Diehr requires that the examiner look at the claimed invention as a whole and compare any asserted utility with the claimed invention to determine whether the asserted utility is accomplished. Applying utility case law the examiner will note that the utility need not be expressly recited in the claims, rather it may be inferred. Moreover, if the utility is not asserted in the written description, then it must be well established.
b. "Tangible" - Applying In re Warmerdam, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994), the examiner will determine

whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. § 101. In Warmerdam the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium which enabled its functionality to be realized. See MPEP §2106 (A). See also Schrader, 22 F.3d at 295, 30 USPQ2d at 1459.

c. "Concrete" - Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. An appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection, because the invention cannot operate as intended without undue experimentation.

Claims 1, 3-87, and 89-101 do not produce a tangible result.

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